



COMMENCING CONSTRUCTION - K.A.R. 28-19-300 STATE CONSTRUCTION PERMITS AND APPROVALS

***INFORMATIONAL SHEET
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K.A.R. 28-19-300 requires a construction permit or approval to be issued before “commencing” construction or modification if the increase in potential-to-emit resulting from the project exceeds certain levels.

This document is intended to provide guidance relating to types of activities considered to occur prior to “commencing” construction. Such activities can be undertaken prior to issuance of a construction permit/approval .

Certain activities clearly are considered pre-construction activities and can therefore be initiated before issuance of the construction permit/approval. For example, land can be cleared, contracts made, equipment purchased, sewers, utility lines and fences constructed, roads built, power lines installed, and equipment stored on site prior to issuance of the construction permit/approval.

Certain activities clearly are considered to occur after commencing construction and can not be initiated until after the construction permit/approval has been issued. For example, equipment whose emissions contribute to the requirement to obtain a construction permit/approval cannot be permanently affixed or installed prior to issuance of the construction permit/approval.

The status of other activities is less clear. Construction of a building is not necessarily prohibited unless the building itself is an integral part of the emissions unit whose emissions trigger the permitting or approval requirement.

Any activity conducted prior to the issuance of the permit is conducted at the owner or operator’s financial risk and shall not be a factor during the application review or permit/approval issuance processes.

This guidance applies only to the provisions of K.A.R. 28-19-300 regarding commencing construction. 40 CFR 52.21(i), regarding the prevention of significant deterioration program, as adopted at K.A.R. 28-19-17f, states that no person shall “begin actual construction” without a permit. For purposes of interpreting the phrase “begin actual construction”, KDHE adheres to the definition of that phrase as found at K.A.R. 28-19-7(i) and 40 CFR 52.21(b)(11) and as addressed by relevant EPA guidance and policy.

The phrase “commence, as applied to construction of a major stationary source or major modification,” as defined at K.A.R. 28-19-16a(e), 40 CFR 52.21(b)(9) and 40 CFR 60.2, addresses applicability of a regulation in relation to a proposed emission unit and has nothing to do with construction or modification of an emission unit in relation to a construction permit.